

NTSB Order No. EA-4690

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 12th day of August, 1998

Respondent.

Docket SE-15007

Respondent has appealed from the oral initial decision of Administrative Law Judge Patrick G. Geraghty, issued on January 13, 1998, following an evidentiary hearing.¹ The law judge affirmed an order of the Administrator, on finding that respondent had violated numerous provisions of 14 C.F.R. 135 and 14 C.F.R. 61.118 in connection with a passenger-carrying flight

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on November 9, 1996.² To summarize, the Administrator charged that respondent did not have any of the necessary certificates, ratings, testing, or competency and flight proficiency checks to act as the pilot-in-command of this Beech Bonanza. Respondent answered that the flight was pursuant to Part 91 and that the Part 135 rules were, therefore, irrelevant.

The hearing was limited to the Administrator's case, as neither respondent nor any counsel for him appeared.³ It is this failure to appear that is the subject of respondent's appeal, which we deny.

By decision served December 2, 1997, the law judge set the hearing in this case for January 13, 1998. Respondent requested a continuance, stating that "[b]ecause of personal legal restraint placed on me at this both the time and date are too early for me to commit to. So I hear by request to move the court to perhaps stick with the original date of this hearing or rescheduling to any day after the 8th of February will be perfectly alright with my legale team."⁴ The Administrator

² The Administrator charged respondent with violating Section 135.3, .5, .243(b)(1), .243(b)(3), .293(a), .293(b), .299, .343, and 61.118.

³ Among other evidence establishing respondent's involvement, the Administrator offered the testimony of one of the three passengers on the flight. Mr. Jackson testified that he booked this business trip with Blue Ridge Airlines, speaking directly with respondent, who was also the pilot of the aircraft. The Administrator introduced a receipt for \$800.52 given Mr. Jackson for the flight, as well as evidence to establish that the Beech Bonanza was not included on Blue Ridge's certificate and that respondent did not have the requisite airman certificate.

⁴ There was no other hearing date set. Respondent's appeal
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replied in opposition, and the law judge denied the request on January 5th, finding a failure to establish good cause. The morning of the hearing, the law judge received information in the form of a fax sent by respondent to the hearing room itself, indicating that he would not be attending the hearing for "personal reasons." Tr. at 7. The law judge allowed the hearing to proceed, noting his unsuccessful attempt to reach respondent that morning to clarify the situation. Id. at 9.

For the first time, respondent now indicates that he was incarcerated at the time of the hearing. While that could have been justification to seek a continuance, it was respondent's obligation adequately to explain his circumstances when it was he who desired the delay.⁵ Respondent had another opportunity to do so when the law judge denied his request. (That order was served certified mail, and we received the return receipt.)⁶

In the circumstances, the law judge did not abuse his

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indicates his belief that the original court date was to be April 3, 1998. We are at a loss to understand how he came to this conclusion. January 13th was the "original" and only hearing date set by the Board. At no point did we receive notice that respondent had hired counsel to represent him, another alternative if he was unable to attend in person.

⁵ There was no basis for the law judge to conclude anything was amiss; respondent's communications with the law judge indicated a business address and phone. Apparently, respondent was on a work-release program.

⁶ Our own records indicate that attempts were made to return all calls respondent made to the Board. Respondent continued, despite advice to the contrary, to attempt to contact the Safety Board via calls to OSHRC, the agency whose courtroom was used for the hearing.

discretion in proceeding with the hearing. Further, respondent offers no challenges to the law judge's findings of fact and conclusions of law regarding the substance of the Administrator's complaint or the quality of his evidence. Thus, there is no basis for a finding that, even had respondent been able to appear, the law judge would have reached any different conclusions.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The 180-day suspension of respondent's private pilot certificate shall begin 30 days from service of this order.⁷

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

⁷ For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(f).